



DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO
ATTENTION OF
AFLG-PR

20 Apr 98

MEMORANDUM FOR FORSCOM Directors of Contracting

SUBJECT: Contracting Information Letter (CIL) 98-22,
Pricing of Commercial Items in the Absence of Adequate
Price Competition

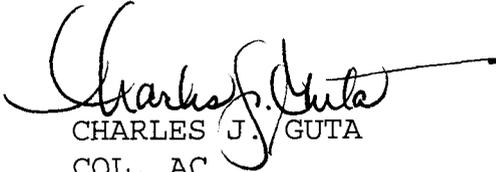
1. Reference memorandum, SARD-PP, subject: Sole-Source Procurements of Commercial Items, dated 30 Mar 98 (enclosed).
2. The contracting officer must purchase supplies and services from responsible sources at **fair and reasonable prices**. Generally, a fair and reasonable price is one which would be paid by a prudent person in the conduct of business. In establishing the fairness and reasonableness of an offered price, the contracting officer must at a minimum perform price analysis. Price analysis is a comparison of proposed prices with current or recent prices for the same or *similar* items. This can be accomplished through market research or through the contracting officer's knowledge of previous contracts which have been awarded by the government. At the very minimum, a comparison of the prices with the independent government estimate should be done to note any unusual or significant variances.
3. The reference is enclosed for your information and necessary action. The DoDIG has found instances of prices being paid for commercial spare parts that were thousands of times higher than the previous prices paid for the same items.
4. Bottom line, as we expand more into the commercial marketplace, we must remember that acquiring commercial items and utilizing commercial practices do not relieve contracting officers from the responsibility to determine whether prices are fair and reasonable and represent the best value for the government.

AFLG-PR

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Price Competition.

5. Point of contact is Judy Armstrong, DSN 367-5559.

Encl
as

A handwritten signature in cursive script, reading "Charles J. Guta", with a long horizontal line extending to the right from the end of the signature.

CHARLES J. GUTA
COL, AC

Chief, Contracting Division, DCSL&R
Principal Assistant Responsible for
Contracting



APR 3 1998

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

30 MAR 1998

REPLY TO
ATTENTION OF

SARD-PP

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Sole-Source Procurements of Commercial Items

At a recent Senate hearing, the DoDIG discussed the continuing audit efforts of her organization on the pricing of commercial spare parts. The DoDIG has found instances of prices being paid that were thousands of times higher than the previous prices paid for the same items.

While noting that the use of commercially available, rather than militarily unique, materiel made good sense, she also said that, "... we found considerable evidence that the DoD had not yet learned how to be an astute buyer in the commercial marketplace."

The IG said that the contractors involved had broken no law or regulation, but rather attributed the overpricing to a number of factors, including:

- When management responsibility for items was transferred to DLA, critical data were not also transferred, including price histories of the items and the fact that the Government had, and had the right to use, technical data necessary for competitive procurements. All of the overpricing involved noncompetitive procurements.
- Inadequate requirements forecasting and a failure to group similar items or items from the same source. This problem can be exacerbated by the use of local purchase authority to avoid DLA surcharges.

However, according to the IG the biggest problem leading to the overpricing was that buyers were routinely accepting and paying catalog prices without challenge and without attempting to negotiate meaningful discounts.

On August 1, 1997, I sent a memorandum to all of the Principal Assistants Responsible for Contracting in the Army, subject: *Fair and Reasonable Prices; Bargaining in the Market Place*. Some of the guidance provided in that memorandum bears repeating.



Changes in the rules for acquiring commercial items have made their acquisition easier, and have also introduced some additional challenges in determining whether prices are fair and reasonable, especially when there is no competition. The clear preference for the acquisition of commercial items does not relieve contracting officers of the need to determine whether prices for commercial items are fair and reasonable and represent the best value for the Army. Contracting officers may not simply rely on the existence of catalog prices in making their determination. Cost or pricing data are not required when purchasing commercial items, but FAR 15.4 provides ample guidance on what can and should be done in pricing commercial items.

Market research and price analysis should enable our contracting officers to determine and document the reasonableness of the price and any need for further negotiation. Information other than cost or pricing data may be required to assist in the price analysis, but there are many potential sources for this information beyond the suppliers themselves.

The bottom line for buying commercial items is that we must become world class customers and buyers; adopt commercial practices, and negotiate, negotiate and bargain some more. There is no substitute for knowledgeable professionals exercising their best business judgment.

My action officer is Mr. Curtis Stevenson, 703-681-1041.



Kenneth J. Oscar
Acting Assistant Secretary of the Army
(Research, Development and Acquisition)

DISTRIBUTION:

Assistant Deputy Chief of Staff for RDA - Acquisition, Contracting and Production Management, HQ, U.S. Army Materiel Command, ATTN: AMCRDA-A, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001

Assistant Deputy Chief of Staff for RDA - Acquisition, Contracting and Production Management (CBDCOM HCA), HQ, U.S. Army Materiel Command, ATTN: AMCRDA-A, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001

Commander, U.S. Army Communications-Electronics Command, ATTN: AMSEL-CG, Fort Monmouth, NJ 07703-5000